



POLICE DEPARTMENT

July 29, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective Keith Knight
Tax Registry No. 920469
Narcotics Borough Manhattan North
Disciplinary Case No. 2014-12105

Detective Kevin Stewart
Tax Registry No. 940772
Narcotics Borough Manhattan North
Disciplinary Case No. 2014-12100

The above-named members of the Department appeared before the Court on May 28, 2015, charged with the following:

Disciplinary Case No. 2014-12105

1. Said Detective Keith Knight, on or about June 26, 2013 at approximately 1725 hours, while assigned to the Manhattan North Narcotics Borough Command and on duty, en route to the 25th Precinct Hub Site located at 120 East 119th Street, New York County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for Person A.

P.G. 210-04, Page 2, Paragraph 5 – MEDICAL TREATMENT OF PRISONER

Disciplinary Case No. 2014-12100

1. Said Detective Kevin Stewart, on or about June 26, 2013 at approximately 1725 hours, while assigned to the Manhattan North Narcotics Borough Command and on duty, en route to the 25th Precinct Hub Site located at 120 East 119th Street, New York County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for Person A.

P.G. 210-04, Page 2, Paragraph 5 MEDICAL TREATMENT OF PRISONER

The Civilian Complaint Review Board (CCRB) was represented by Nicole S. Junior, Esq. Respondents were represented by James Moschella, Esq., Karasyk & Moschella LLP.

Respondents pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondents are found Guilty.

FINDINGS AND ANALYSIS

This case arises out of a prisoner becoming ill during the course of several hours spent in a prisoner van and an allegation that Respondents refused to allow him access to medical treatment. Respondents, both assigned to Narcotics Borough Manhattan North, were assigned to the prisoner van as part of a field team making observation-sale arrests. The complainant here, Person A, was taken into custody in Central Park in the vicinity of 110th Street and Seventh Avenue after being observed sitting on a rock smoking a marijuana cigarette. Respondents arrived at the location after being informed of the arrest and picked up Person A. He was their first prisoner of the evening, at approximately 1725 hours. Respondents continued in the van, taking custody of additional prisoners (Tr. 13-15, 17, 35).

During the ride, Person A became ill and vomited in the van. Another prisoner alerted Respondents that Person A had thrown up. There was a significant amount of vomit, red in color, which covered about five feet of the van interior. After pulling over, Respondents decided to go to the 30 Precinct station house where there was a hose to clean out the van. The prisoners were taken out of the van while Respondent Stewart cleaned it. After the van was hosed down, all of

the prisoners, including Person A, were placed back inside the van and Respondents continued with their enforcement duties. Respondents brought the prisoners to the 25 Precinct station house for processing at approximately 2145 hours. Person A ultimately was given a desk appearance ticket and permitted to leave about an hour later (Tr. 18-20, 28, 47).

The CCRB presented a hearsay case with no live witnesses testifying. Transcripts of interviews with Person A from two days after the incident (CCRBX 1) as well as with Person B, another prisoner from the van (CCRBX 2), were entered into evidence.

Person A, reading to the CCRB investigator from a written statement that appeared to be prepared for the purposes of litigation (although neither the CCRB nor Respondents' counsel actually knew of any lawsuit), asserted that he was inside an extremely hot van from 1500 to 2300 hours, without access to his [REDACTED] medication. He also said that he had been smoking the marijuana cigarette for medicinal purposes, [REDACTED] (CCRBX 1, pp. 5, 10).

Person A stated that he informed the officers he was [REDACTED] he felt sick and dizzy, and he needed medication. The officers continued driving from "precinct to precinct," refusing to allow him to obtain medical care even after he vomited "all over myself." His backpack had his medication but the officers refused to give him the bag. He explained that he was sure they heard his request, even though he could not see them through the glass, because they asked him what medication he was taking (CCRBX 1, pp. 5-6, 20-23).

Person B, who also was a prisoner in the van, was interviewed on October 7, 2013. Person B recalled that as he was being placed in the van, Person A was complaining that he was sick and explaining that he was [REDACTED]. The officers said that they would "be there soon" but in fact the prisoners were in the back of the van for "a very long time." Person B said that after Person A vomited,

the officers "mocked" and dismissed him as he again asked for medical attention. Person B contended that Person A requested medical attention "way more than five times," specifically recalling that he told officers, "I'm very sick." Person B remembered that one of the officers told Person A, "if we could take you to the hospital, it's going to take longer for you." He did not, however, recall Person A asking for medication (CCRBX 2, pp. 4-6, 13-16).

While Respondents agreed that Person A did vomit in the van, they asserted they never were made aware Person A [REDACTED] wanted medical attention. Respondent Stewart testified that after Person A vomited, he asked him how he was feeling and he replied, "I'm fine, I'm fine." Respondent Stewart contended that although the vomit was red, it was not blood but more like Gatorade. Person A did not appear sick or in need of medical attention and never requested to go to the hospital or asked for medical attention at any point. Respondent Stewart further asserted that had he asked to go to the hospital, he would have honored that request because "it doesn't benefit me in any way not to take him to the hospital." Finally, he recalled observing Person A doing leg lifts on the bars of the precinct holding cell (Tr. 20-21, 24, 31-32).

Respondent Knight similarly testified that he was not given any medication or bag belonging to Person A by the arresting officers. He contended that Person A never complained that he felt ill or asked for medical attention. He testified that Person A was asked specifically if he wanted to go to the hospital and responded, "No, I'm okay." Knight asserted that "based on [his] experiences," Person A did not require medical treatment and "appeared normal to me" (Tr. 44-45, 48-49).

Finally, Detective Melvin Mejia, one of the arresting officers, testified that Person A had no medication on his person and no property beyond his ID and some other cards. Person A never informed him of any medical conditions. When Mejia saw Person A again several hours later at the

precinct, Mejia believed that his physical condition was "normal" and noted that Person A smiled at him in a friendly way as he left (Tr. 37-40).

Respondents are charged with failing to obtain medical treatment for Person A. The specification cites Patrol Guide § 210-04 (5), which provides that the desk officer in the arrest command must, in non-emergency situations, direct that a prisoner "requiring" medical treatment, "which may result in being admitted to the hospital, be removed to a local hospital for treatment and evaluation." Respondents obviously were not the desk officer. The generally applicable section of the procedure ("Uniformed Member of the Service") is, when a prisoner requires medical treatment, to request an ambulance, and have the prisoner taken to the hospital if necessary. Patrol Guide § 210-04 (5).

There was no claim here that Respondents were unaware of CCRB's actual contention against them. In fact, counsel admitted during his summation that the CCRB's argument from the Patrol Guide was that "if somebody requires medical attention, get it."

The crux of Respondents' defense was that Person A was not in need of medical treatment, as he only vomited, one time, and appeared normal or fine to them. Certain facts are in dispute – whether Person A asked for medical treatment, and whether the officers were aware that he was feeling ill and needed medication. Determining the truth is further complicated by the fact that Person A did not appear at trial and therefore was not subject to cross-examination. The undisputed evidence alone, however, is sufficient to find Respondents guilty of failing to obtain medical treatment for Person A, under either part of the Patrol Guide procedure.

Respondent Stewart estimated that Person A's vomit covered approximately five feet of the van. Respondents determined that a hose was necessary to clean the vomit. Through their counsel, though, they argued that "just because a prisoner vomits does not mean they require

medical attention.” Counsel further opined that as a parent, you would not rush a child to the hospital every time she vomits because most often it is a simple stomach problem and she feels better shortly afterward (Tr. 56-57).

This court is unpersuaded by these arguments. A prisoner who vomited such a copious amount, which was partially red in color, should, in the interest of caution, have been taken for medical examination and treatment. Respondents are not doctors. They lacked the requisite training to determine whether Person A was “fine” or “normal” or whether he was dehydrated or suffering from heatstroke or any other ailment on that summer evening. They also were not qualified to determine whether the red coloring in the vomit was caused by Gatorade, as Respondent Stewart suggested, or blood or something entirely different. They did not ask Person A why his vomit was red and had not seen him drinking Gatorade. Respondent Stewart admitted that the Gatorade was just a surmise.

In other words, Person A could have had a simple stomach ailment, or he could have been having a severe gastrointestinal episode. Respondents were not qualified to determine this. Instead, Respondents were required by the Patrol Guide to err on the side of caution precisely because they did not know what they were dealing with. *Cf. Case Nos. 77799-802/02*, p. 25 (Jan. 19, 2004) (rejecting defense that officers did not call for medical assistance in part because prisoner’s head had stopped bleeding, noting that officers were not doctors or paramedics and could not be certain of his condition); *Case No. 78337/02*, pp. 10-11 (May 14, 2003) (officer should have called for medical attention where prisoner, who eventually was determined to have a dislocated leg, was screaming, dragging his legs, and could not walk without assistance).

Counsel’s example of a parent tending to a child with a stomachache is inapposite. Parents are intimately familiar with their children’s medical history, disposition and normal

appearance. Parents know when their child has a little stomach upset, or, in the alternative, something more serious is happening. Respondents completely lacked such familiarity with Person A and could not have made that kind of judgment.

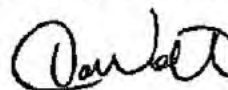
In sum, the tribunal finds that a prisoner fell ill while in custody of Respondents and Respondents failed to obtain medical treatment for that prisoner. For that reason, Respondents are found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). Respondent Knight was appointed to the Department on December 8, 1997. Respondent Stewart was appointed to the Department on January 9, 2006. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

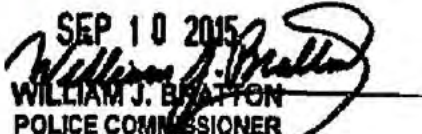
The Department recommended a penalty of five vacation days. This is consistent with prior recent cases, see, e.g., Case No. 84093/08 (June 17, 2010). Given that both Respondents lack any formal disciplinary history, this tribunal endorses that recommendation, and recommends that each Respondent forfeit five vacation days as a penalty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

SEP 10 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

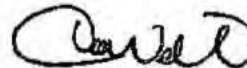
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE KEITH KNIGHT
TAX REGISTRY NO. 920469
DISCIPLINARY CASE NO. 2014-12105

Respondent Knight was appointed to the Department on December 8, 1997. His last three annual evaluations were 4.0 ratings of "Highly Competent" for 2012-2014. He has received three medals for Excellent Police Duty and one medal for Meritorious Police Duty.

Respondent Knight has no prior formal disciplinary history.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

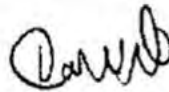
From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE KEVIN STEWART
TAX REGISTRY NO. 940772
DISCIPLINARY CASE NO. 2014-12100

Respondent Stewart was appointed to the Department on January 9, 2006. His last three annual evaluations were as follows: he received an overall rating of 4.0 rating of "Highly Competent" in 2014, a 3.0 rating of "Competent" in 2013 and a 3.5 rating of "Highly Competent/Competent" in 2012. He has received one medal for Excellent Police Duty.

[REDACTED]

Respondent Stewart has no prior formal disciplinary history.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials